

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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James Paul Aery,

Case No. 24-cv-3246 (NEB/LIB)

Plaintiff,

v.

**REPORT AND RECOMMENDATION**

Brian Birt,

Defendant.

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This matter comes before the undersigned United States Magistrate Judge upon the routine supervision of the cases that pend before the Court, pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. § 636.

In an Order dated August 27, 2024, this Court directed Plaintiff James Paul Aery to pay the full statutory filing fee of \$405 for this action. (See Order [Docket No. 3]). Plaintiff was given thirty days from the date of the August 27, 2024, Order to comply. (Id.). Plaintiff was forewarned that if he failed to pay this action's filing fee in the time permitted, it would be recommended that this action be dismissed without prejudice for failure to prosecute. (See Id. at 3) (citing Fed. R. Civ. P. 41(b)).

That deadline has now passed, and Plaintiff has not paid the filing fee. In fact, Plaintiff has not communicated with the Court about this case at all since commencing this action. Accordingly, this Court now recommends, consistent with the warning previously given to Plaintiff, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. Henderson v. Renaissance Grand Hotel, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

Therefore, based upon the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT** this action be **DISMISSED without prejudice** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Dated: October 10, 2024

s/ Leo I. Brisbois  
Hon. Leo I. Brisbois  
United States Magistrate Judge

**NOTICE**

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. See Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).